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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,866	10/31/2003	James BAECHLE	4095	2865

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EXAMINER

FIDEI, DAVID

ART UNIT PAPER NUMBER

3728

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/605,866	<b>Applicant(s)</b> BAECHLE	
	<b>Examiner</b> David T. Fidei	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-15 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/27/04</u> . | 6) <input type="checkbox"/> Other: ____  |

***Information Disclosure Statement***

1. The information disclosure statement filed January 27, 2004 has document Patent no. 4484444 lined through because the patent deals with an Apparatus and methods of amplifying engine emissions by which to increase the overall engine efficiency. The relevancy to the present subject matter is not seen.

***Claim Construction***

2. In analyzing applicant's invention as set out in the pending claims, the examiner sets forth the following to aid in understanding the application of the prior art herein. Claims are to be given their broadest reasonable during prosecution, see *In re Priest*, 582 F.2d 33, 37 199 USPQ 11, 15 (CCPA 1978), and limitations from the specification will not be read into the claims, see, e.g. *In re Prater*, 415 F.2d 1393, 1404-1405, 162 USPQ 541, 550-51 (CCPA 1969). Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997), see MPEP 2106.

In order to further limit the claim there must be some distinction based upon the intended use recited. "However, in apparatus, article, and composition claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art, see M.P.E.P. § 2111.02 THE INTENDED USE MAY FURTHER LIMIT THE CLAIM IF IT DOES MORE THAN MERELY STATE PURPOSE OR INTENDED USE. The examiner can see no structural differences between the claimed invention and the prior art based upon baseloid flange 48 extending downward from the top edge of the rear panel for accommodating a baseloid lift blade.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 6-9, 11, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bamberg et al (Patent no. 4,260,071). As to claim 1 package is disclosed comprising a bottom member 12 for enclosing a bottom portion of the product, the bottom member comprising a rear panel 28 adjacent a side of the product and having top edge and a baseloid flange 48 extending downward from the top edge of the rear panel for accommodating a baseloid lift blade.

As to claim 3, the bottom member further comprises side panels 26, 30 extending perpendicularly from the rear panel and a front panel 32 extending perpendicularly from the side panels.

As to claim 6, the bottom member further comprises a plurality of bottom flaps 66, 68, 70 and 72 that extend under the product to form a package bottom.

As to claim 7, one bottom flap 68 is joined to the lower edge of the rear panel, opposing bottom flaps 66, 70 joined to the lower edges of the side panels and a fourth bottom flap 72 joined to the lower edge of the front panel.

As to claim 8, the baseloid flange comprises an upper edge panel (not numbered) extending substantially horizontally from the rear panel, note figure 11. An outer panel 44, 48 extending downwardly from the upper edge panel, a lower edge panel (not numbered) extending horizontally inward from the outer panel 176, 178 and an inner panel 184, 186 extending vertically upward so that it is adjacent to the outer panel 44, 48 and interposed between the outer panel and the panels 26, 30. While this relationship is shown with reference to the side panels, the same "baseloid" flange goes around the bottom member and is evident in the rear panel.

As to claim 9, the bottom member is formed of corrugated board, see col. 3, line 65.

As to claim 11, a top cap 24 is disclosed along with corner posts 22.

As to claim 14, a horizontal retaining band 252 urges the baseloid flange toward the rear panel.

As to claim 15, the top cap comprises a center panel 175, front 178, rear 176 and side panels 196, 198 extending downward from the periphery of the center panel.

5. Claims 1-3 and 9-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Ballard (Patent no. 4,226,327). As to claim 1 package is disclosed comprising a bottom member for enclosing a bottom portion of the product, the bottom member comprising a rear panel 18 adjacent a side of the product 6 and having top edge and a baseloid flange 36 extending downward from the top edge of the rear panel for accommodating a baseloid lift blade.

As to claim 2, the flange 36 is below the top surface of appliance 6 as shown in figure 5.

As to claim 3, the bottom member further comprises side panels 23, 25 extending perpendicularly from the rear panel 18 and a front panel 20 extending perpendicularly from the side panels, see figure 1.

As to claims 9 and 10, the bottom member is formed of a type of fiberboard material, corrugated fiberboard, see col. 2, lines 58-63.

As to claim 11, a top cap is formed by portion 16 and the in folding of flaps 24 and 26 form corner posts extending vertically between the top cap 16 and the bottom member 18 having upper ends fitted under the cap and lower ends between the product 6 and the bottom member 18.

As to claim 12, the top cap, bottom member and corner posts form an enclosure having open sides that allow the packaged product to be viewed, see figure 1.

As to claim 13, a transparent bag 4 is draped over the product.

As to claim 14, a horizontal retaining band 50 urges the baseloid flange toward the rear panel.

As to claim 15, the top cap comprises a center panel 16, front 20, rear 40 and side panels 32, 32', 23, 25 extending downward from the periphery of the center panel.

#### ***Allowable Subject Matter***

6. Claims 4 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION**

7. “In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant’s or patent owner’s reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)”, see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner’s action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematureness of final rejection or admission of subsequent amendments do not necessarily reflect present practice. “Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)” (emphasis mine), see MPEP 706.07(a).

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**Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf  
March 6, 2005